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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 581.

In the Matter

of

The Petition of COMPANHIA DE NAVEGACAO LLOYD BRASILEIRO for exemption from or limitation of its liability as owner of the Steamship "MANDU".

GREAT AMERICAN INSURANCE COMPANY, *et al.*,
Petitioner,

COMPANHIA DE NAVEGACAO LLOYD BRASILEIRO,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION OF THE GREAT AMERICAN INSURANCE COMPANY, ET AL. FOR A WRIT OF CERTIORARI.

FRANK J. McCONNELL,
Counsel for Companhia de Navegacao Lloyd Brasileiro.

JAMES D. BROWN,
T. CATESBY JONES,
LEONARD J. MATTESON,
Of Counsel.

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GREAT AMERICAN INSURANCE COMPANY, *et al.*,
Petitioner.

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Respondent.

BRIEF IN OPPOSITION TO THE PETITION OF THE GREAT AMERICAN INSURANCE COMPANY, ET AL. FOR A WRIT OF CERTIORARI.

The questions stated in the petition for a writ of certiorari (pp. 5-6) presented to this Court by The Great American Insurance Company, *et al.*, for brevity called Great American, rest upon assumptions and propositions which are unsound. These questions assume that Companhia de Navegacao Lloyd Brasileiro (hereafter for brevity called Lloyd Brasileiro) voluntarily sought the jurisdiction of the United States Court; that when Lloyd Brasileiro came into the United States Court it consented that the substantive law of the United States become applicable to a tort which arose within the territorial jurisdiction of Brazil; that it is against the public policy of the United States to apportion fault between these vessels even though the law of Brazil where the collision occurred provides that fault should be so apportioned; and that

since it is concluded that it is impossible for the Courts of the United States to apportion fault as required by the Brazilian law, it follows that our Courts should disregard the Brazilian law and apply our own.

I.

The Companhia de Navegacao Lloyd Brasileiro did not voluntarily seek the jurisdiction of the courts of the United States. It filed its petition for limitation of liability to protect itself from periodic suits which Great American brought against its S. S. "Mandu" and to protect its vessel, the "Mandu", from repeated arrests which were depriving it of the use of the "Mandu" and which were causing serious damage to its business.

The facts relating to the proceedings for limitation of liability are stated in the Petition of Lloyd Brasileiro for a writ of certiorari* filed in this Court after Great American had filed its petition for a writ of certiorari. From this statement it appears that Lloyd Brasileiro did not seek limitation until its vessel had been twice arrested for alleged claims of Great American. The first libel for $217,140 was filed on June 30, 1930. The vessel was then arrested and, upon bail being given, was released from arrest. This libel was later amended on October 22, 1930, after the "Mandu" had made a round trip to Brazil, so as to increase the damages to $225,872.31 (Lloyd Brasileiro Petition, p. 2). The second libel for $137,695.83, was filed on October 25, 1930, and the "Mandu" was arrested the second time. Since the filing of the second libel brought the aggregate damages demanded to $363,568.14, a sum far exceeding the value of the "Mandu" (Lloyd Brasileiro Petition, p. 3), Lloyd Brasileiro had no

* No. 585, October Term, 1940.

alternative other than to seek relief through a petition for limitation of liability. To say that under these circumstances Lloyd Brasileiro voluntarily sought the jurisdiction of the courts of the United States when it filed its petition for limitation of liability, is not in accordance with the facts (Lloyd Brasileiro Petition, pp. 4-8).

Limitation of liability does not affect substantive rights, and is a defensive remedy. *The Titanic*, 233 U. S. 718, 731; *Restatement Conflict of Laws*, §411. It is a defense which may be set up by answer or by a petition for limitation of liability. *Langnes* v. *Green*, 282 U. S. 531; *Larsen* v. *Northland Transportation Co.*, 292 U. S. 20. Congress by statute recognized the defensive nature of limitation of liability when by the Act of June 5, 1936, it amended R. S. 4285, 46 U. S. C. §185; Act of June 5, 1936, c. 521, §3, 49 Stat. 1479, amending R. S. 4285, and thereby made it a condition that if the defense is asserted by petition for limitation of liability, such a petition must be filed "within six months after a claimant shall have given to or filed with such owner written notice of claim", etc. When, therefore, the owner of the "Mandu" invoked limitation of liability, it did not "seek the refuge of our courts" as is stated in the petition of Great American (Great American Petition, pp. 5, 6). It merely filed a pleading by way of defense to protect itself from being harassed by numerous libels and in order to place itself in a position where it could carry on its business without continued interruption caused by judicial arrests. Certainly under these circumstances it would be most unjust to penalize a foreigner, so that he shall be held to liabilities created by the law of the forum rather than to liabilities created by the lex loci, merely because he has taken advantage of a defense designed to prevent such harassing tactics as those which were pursued by Great American in this case.

II.

A foreign shipowner does not by coming into our courts submit himself to the subjective law of the United States. The question as to what substantive law is applicable in a case involving any collision is determined by the law of the place where the collision occurred.

The collision occurred within the territorial waters of Brazil. Hence the law of Brazil is applicable.

In *Smith* v. *Condry*, 42 U. S. (1 How.) 28, this Court said:

> "The collision having taken place in the port of Liverpool, the rights of the parties depend upon the provisions of the British statutes, then in force; and if doubts exist as to their true construction, we must of course adopt that which is sanctioned by their own courts" (p. 32).

See also:

The Scotland, 105 U. S. 24, 29.

See also:

Restatement, Conflict of Laws, §409:

> "§409. Liability for an alleged tort caused by collision in the territorial waters of a state is governed by the law of that state."

III.

The cause of action arose under Brazilian Law, which is the lex loci. The Brussels Convention is a treaty to which both Germany and Brazil are parties and is the source of the law of Brazil which controls in the determination of the rights and liabilities of the parties. Since the right is created by the law of the place of the wrong, it is measured by that law.

Both Courts below found that the Brussels Convention is a treaty to which both Germany and Brazil are parties and is the source of the law which controls in the determination of rights and liabilities which flow out of a wrong committed on Brazilian territorial waters (R. 214, 640; R. 738g; R. 2205, 2208). We assume that this concurrent finding of fact will not be disturbed by this Court. It appears, therefore, that the cause of action here involved arose under Brazilian law and under the Brussels Convention, a treaty to which both the German and the Brazilian nations were signatory.

It was admitted at the trial that both Brazil and Germany had adopted the Brussels Convention (R. 232).

The collision out of which the cause of action arose was between a German vessel and a Brazilian vessel. The law of the two countries was the same, viz.: The Brussels Convention, which provides in Article 1:

> "Where a collision occurs between seagoing vessels or between seagoing vessels and vessels of inland navigation, the compensation due for damages caused to the vessels or to any things or persons on board thereof, shall be settled in accordance with the following provisions, in whatever waters the collision takes place" (R. 182).

(A translation of the Brussels Convention is printed in the appendix.)

In Restatement of Conflict of Laws, §412, and the Commentary, it is stated:

> "Since the right is created by the law of the place of the wrong, it is measured by that law."

See also:

> Sutherland on Damages, Vol. 1, §7;
> Goodrich on Conflict of Laws, §91.

In *Sullivan* v. *Nitrate Producers S. S. Co., Ltd.*, 262 F. 371 (C. C. A. 2), Judge Hough, writing for the Circuit Court of Appeals for the Second Circuit, cited *The Eagle Point*, and said:

> "But it turned out on the evidence that to this injury, received on the high seas by a member of the crew and on a British vessel, British law alone was applicable (*The Eagle Point*, 142 F. 453, 73 C. C. A. 569), and under that law libellant has no right to an indemnity * * *" (at p. 373).

Article 4 of the Brussels Convention reads as follows:

> "ART. 4. If two or more vessels are in fault, the liability of each vessel is in proportion to the degree of the faults respectively committed. Provided that if, having regard to the circumstances, it is not possible to establish the degree of the respective faults, or if it appears that the faults are equal, the liability is apportioned equally.
>
> The damages caused, either to the vessels or to their cargoes or to the effects or other property of the crews, passengers, or other persons on board, are

borne by the vessels in fault in the above proportions, and even to third parties a vessel is not liable for more than such proportion of such damages.

In respect of damages caused by death or personal injuries, the vessels in fault are jointly as well as severally liable to third parties, without prejudice, however, to the right of the vessel which has paid a larger part than that which, in accordance with the provisions of the first paragraph of this article, she ought ultimately to bear, to obtain a contribution from the other vessel or vessels in fault.

It is left to the law of each country to determine as regards such right to obtain contribution, the meaning and effect of any contract or provision of law which limits the liability of the owners of a vessel towards persons on board" (R. 182-3).

It is submitted that the Courts below were right when they held that the recovery in this case could not exceed that permitted by this article of the Brussels Convention.

IV.

The public policy of our law as to apportionment of fault is irrelevant. The foreign law determines the apportionment of damages. Since it has been conceded that the Brussels Convention has been formally adopted by Brazil, it constitutes the public policy of that country. It is immaterial that public policy of Brazil differs from our own.

In *The Eagle Point*, 142 F. 453 (C. C. A. 3), certiorari denied, 201 U. S. 644, the case arose out of a collision which occurred on the high seas between two British vessels. Certain owners of cargo sought recovery in full on the same theory advanced here. The District Court

held that the amount of the damages was a matter of remedy and not of right and allowed full damages. The Circuit Court of Appeals reversed, holding that as both vessels were British, the right of the cargo owners, who were not British, was determined by British law, and cargo could not recover a greater amount of damages than the sum provided under British law.

After citing *The Eagle Point* in *In re Pennsylvania R. Co.*, 48 F. (2d) 559, at page 565, the Circuit Court of Appeals for the Second Circuit, said:

> "The law of the place where the tort occurs also controls the extent of the recovery."

In *Canada Malting Co.* v. *Paterson Steamships, Ltd.*, 51 F. (2d) 1007 (C. C. A. 2), affirmed 285 U. S. 413, the Court, after citing *The Eagle Point*, said:

> "When two vessels of the same nationality collide upon the high seas, the law enforced by the forum will be the law of the flag."

Galef v. *United States*, 25 F. (2d) 134, much relied upon by Great American, is not to the contrary. It is true that the liability there arose out of a collision which occurred in German territorial waters, the harbor of Hamburg, but the liability sued on was not created by the German law, because the cause of action was against the United States. The suit was between an American citizen and the United States. The American citizen owned cargo which was damaged by a ship, the S. S. "Magmeric", the property of the United States. There was no cause of action except that created by the law of the United States. *The Western Maid*, 257 U. S. 419. The liability sued upon in that case was admittedly created by the Suits in Admiralty Act, 46 U. S. C., §742, a statute

of the United States enacted March 9, 1920 (c. 95, §2, 41 Stat. 525). Without the Suits in Admiralty Act there was no liability of the United States. Indeed, in *Galef* v. *United States*, 25 F. (2d) 134, the Court placed its decision on the ground the liability to be enforced was that created by the United States and for this reason held that the Court was not bound by the German law. The Court said:

> "The theory of the defense is that the rights of the parties are governed strictly and solely by the German statute. I cannot agree to this proposition. The 'Magmeric' is the property of the United States and is not subject to the laws of Germany. The law is stated in the Suits in Admiralty Act" (pp. 135, 136).

It is true that the right to assert that the whole liability is subject to limitation, if the shipowner should seek limitation, is determined by the law of the forum, but this is far from saying that the question of exoneration is to be governed by the law of the forum. The issue of exoneration must be decided first before there is any liability to limit. That there are two issues involved in every limitation proceeding is well settled. *The Rambler*, 290 F. 791 (C. C. A. 2); *The 84 H*, 296 F. 427, 432. In the first of these cases Judge Hough, speaking for the Circuit Court of Appeals for the Second Circuit, said:

> "The first duty of the court is to ascertain whether any liability exists, and if none exists there is the end of the matter." *The Rambler*, 290 Fed. 791, p. 792.

In *The Titanic*, 233 U. S. 718, 732, this Court said:

> "It is true that the Act of Congress does not control the conduct of a British ship on the high seas. See *American Banana Co.* v. *United Fruit Co.*, 213

U. S. 347, 356. It is true that the foundation for a recovery upon a British tort is an obligation created by British law. But it also is true that the laws of the forum may decline to enforce that obligation on the ground that it is contrary to the domestic policy, or may decline to enforce it except within such limits as it may impose. *Cuba Railroad Co.* v. *Crosby*, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed. 647."

But we know of no case which holds that there is a liability which may be sued on in our courts where there is no liability created by foreign law.

In the present case, neither the United States nor a citizen of the United States is involved. The only law which exists that could create a liability for a tort growing out of a collision occurring in the territorial jurisdiction of Brazil when the two vessels involved are German and Brazilian, is the Brussels Convention. That became the law of Brazil when Brazil accepted the Brussels Convention (p. 5, *supra*). The circumstance that certain American insurance companies had insurance on fractional cargo interests and paid losses on these fractional interests, does not change the legal situation. A surety stands in the shoes of his principal; his rights are the rights of the principal; defenses good against the principal are good against him. *Phoenix Ins. Co.* v. *Erie & Western Transp. Co.*, 117 U. S. 312; *U. S.* v. *American Tobacco Co.*, 166 U. S. 468. No greater liability can be imposed.

In *Western Union Telegraph Co.* v. *Brown*, 234 U. S. 542, 547, this Court said:

"Whatever variations of opinion and practice there may have been, it is established in the law of this

court that when a person recovers in one jurisdiction for a tort committed in another he does so on the ground of an obligation incurred at the place of the tort that accompanies the person of the defendant elsewhere, and that is not only the ground but the measure of the maximum recovery. *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120, 126. *Cuba R. R. Co.* v. *Crosby*, 222 U. S. 473, 478, 480. (A limitation of liability may stand on different grounds. *The Titanic*, 233 U. S. 718.) The injustice of imposing a greater liability than that created by the law governing the conduct of the parties at the time of the act or omission complained of is obvious; and when a State attempts in this manner to affect conduct outside its jurisdiction or the consequences of such conduct, and to infringe upon the power of the United States, it must fail."

V.

The Great American Insurance Company argues that because it is impossible for our courts to enforce the Brussels Convention, which is the basis of the liability claimed, our courts should disregard the foreign law and enforce our own law. If it is impossible for our courts to enforce a liability created by a foreign law in accordance with the provisions of that law, then our courts can give no remedy in such a case.

Under Point I of the brief of The Great American Insurance Company the argument is made, apparently in support of all five questions propounded in its petition, that because "it is impossible for a court of the United States properly to apply Article IV of the Brussels Con-

vention", that law should have been disregarded and the law of the United States should have been applied in the present case. The fact that Article IV of the Brussels Convention was in fact applied by the Court below in this case seems to be a complete answer to the argument that it is impossible for a court of the United States to apply it. The District Court concluded that both vessels were equally at fault. The Circuit Court of Appeals, however, reversed that conclusion and apparently found no difficulty in reaching its conclusion that the faults of the "Denderah" were four times as great as those of the "Mandu". Both Courts found in accordance with the provisions of Article IV of the Brussels Convention that the liability of the "Mandu" was only in proportion to her degree of fault. The supposed difficulty stated in Great American's petition and supporting brief, that our courts cannot apportion fault other than equally, exists only in counsel's mind. The Court did apportion fault and, although we are convinced no fault should have been allotted to the "Mandu", it cannot be said that the Court performed an impossible task when it did so. The Circuit Court of Appeals did not consider that it was performing an impossible task when it apportioned liability four-fifths to the "Denderah" and one-fifth to the "Mandu" because by Article 4 of the Brussels Convention it is provided that if it is impossible "to establish the degree of the respective faults", the liability is to be apportioned equally. The very fact that the Court did not apportion the fault equally is convincing proof that the Court did not consider it impossible to enforce the Brussels Convention.

But admitting, for the sake of argument, that it is impossible for our courts to apply Article IV of the Brussels Convention, then the consequence is, not that the Court should apply our law but, that "no action will be

allowed". It is so stated by Professor Beale in his Treatise on Conflict of Laws, page 1311:

> "If the action allowed by the statute of the state of injury is such that no remedy can be had in the forum, as for instance because an annuity is given by the law of the state of injury, which cannot be secured by judgment in a common-law state, no action will be allowed."

This statement is merely a summary of this Court's decision in *Slater* v. *Mexican National R. Co.*, 194 U. S. 120. In that case, in an opinion by Mr. Justice Holmes, at pages 126, 127, this Court in disposing of an appeal from a Federal court in Texas which had dealt with an action for unlawful death which occurred in Mexico, held that because the United States courts were without power to award the only remedy for unlawful death given by the law of Mexico, the suit must be dismissed. The cause of action arose under a law of Mexico, which did not provide for the recovery of a lump sum of money for unlawful death, but for an annuity to be paid to the dependents of the decedent. The Circuit Court held that, as it was without machinery to carry into effect the provisions of the Mexican law, the annuity might be amortized and the jury could award a lump sum. The Circuit Court of Appeals reversed this judgment, on the ground that our courts could not provide a remedy which differed from that created by the law of Mexico. This Court affirmed the judgment of the Circuit Court of Appeals on the ground that, since the only source of obligation imposed on the defendant was the law of Mexico, the defendant could not be denied the benefit of whatever limitations on his liability that law imposed.

The Court then held that there was no cause of action which could be enforced in our Courts.

In *Davis* v. *Mills*, 194 U. S. 451, also an opinion of Mr. Justice Holmes, and in *Cuba R. R. Co.* v. *Crosby*, 222 U. S. 473, 478, the Court enforced the same principle as that announced in *Slater* v. *Mexican National R. Co.*, 194 U. S. 120. The view announced by Mr. Justice Holmes in the *Slater* case has ever since been regarded as settled law. *Ormsby* v. *Chase*, 290 U. S. 387; *Moore* v. *C. & O. Ry. Co.*, 291 U. S. 203.

In the petition for a writ of certiorari filed in this case by Lloyd Brasileiro,* the point is made that the Courts below should have refused to take jurisdiction of this case because it is in substance an action between Germans and Brazilians based on a collision which occurred in the territorial waters of Brazil. The argument now made for Great American, is that the courts of the United States are not able to enforce the liability created by the laws of Brazil, hence the courts of the United States should decline to enforce that law and enforce the law of the United States. We submit that the result is just the contrary—if the courts of the United States cannot enforce a foreign law, they refuse to take jurisdiction of the cause of action at all. This argument thus strongly supports the position of Lloyd Brasileiro and the prayer of its petition for certiorari for review of this case, so as to enable this Court to reverse the first decision of the Circuit Court of Appeals and to restore the decree of the District Court dismissing the libels and claim of Great American and allowing Lloyd Brasileiro to withdraw its petition for limitation of liability.

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* No. 585, October Term, 1940.

CONCLUSION.

The purpose of all five of the questions which Great American submits for the consideration of this Court, is to impose a greater liability on Lloyd Brasileiro than that created by Brazilian law. Since this Court has in previous decisions answered these questions adversely to Great American's contentions, it is submitted that the petition of Great American should be denied.

Respectfully submitted,

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Appendix.

TRANSLATION OF THE BRUSSELS CONVENTION.

(Printed in Record at p. 182.)

Signed at Brussels, September 23rd, 1910.

ART. 1. Where a collision occurs between sea-going vessels or between sea-going vessels and vessels of inland navigation, the compensation due for damages caused to the vessels or to any things or persons on board thereof, shall be settled in accordance with the following provisions, in whatever waters the collision takes place.

ART. 2. If the collision is accidental, if it is caused by *force majeure*, or if the cause of the collision is left in doubt, the damages are borne by those who have suffered them.

This provision is applicable notwithstanding the fact that the vessels, or any one of them may be at anchor (or otherwise made fast) at the time of the casualty.

ART. 3. If the collision is caused by the fault of one of the vessels, liability to make good the damages attaches to the one which has committed the fault.

ART. 4. If two or more vessels are in fault, the liability of each vessel is in proportion to the degree of the faults respectively committed. Provided that if, having regard to the circumstances, it is not possible to establish the degree of the respective faults, or if it appears that the faults are equal, the liability is apportioned equally.

The damages caused, either to the vessels or to their cargoes or to the effects or other property of the crews, passengers, or other persons on board, are borne by the vessels in fault in the above proportions, and even to

third parties a vessel is not liable for more than such proportion of such damages.

In respect of damages caused by death or personal injuries, the vessels in fault are jointly as well as severally liable to third parties, without prejudice, however, to the right of the vessel which has paid a larger part than that which, in accordance with the provisions of the first paragraph of this article, she ought ultimately to bear, to obtain a contribution from the other vessel or vessels in fault.

It is left to the law of each country to determine as regards such right to obtain contribution, the meaning and effect of any contract or provision of law which limits the liability of the owners of a vessel towards persons on board.

ART. 5. The liability imposed by the preceding articles attaches in cases where the collision is caused by the fault of a pilot, even when the pilot is carried by compulsion of law.

ART. 6. The right of action for the recovery of damages resulting from a collision is not conditional upon the entering of a protest or the fulfillment of any other special formality.

All legal presumptions of fault in regard to liability for collision are abolished.

ART. 7. Actions for the recovery of damages are barred after an interval of two years from the date of the casualty.

The period within which an action must be instituted for enforcing the right to obtain contribution permitted by paragraph 3 of ART. 4, is one year from the date of payment.

The grounds upon which the said periods of limitation

may be suspended or interrupted are determined by the law of the Court where the case is tried.

The high contracting parties reserve to themselves the right to provide, by legislation, in their respective countries, that the said periods shall be extended in cases where it has not been possible to arrest the defendant vessel in the territorial waters of the State in which the plaintiff has its domicile or principal place of business.

ART. 8. After a collision, the master of each of the vessels in collision is bound, so far as he can do so without serious danger to his vessel, her crew and her passengers, to render assistance to the other vessel, her crew and passengers.

He is likewise bound so far as possible to make known to the other vessel the name of his vessel and the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

A breach of the above provisions does not of itself impose any liability on the owner of a vessel.

ART. 9. The high contracting parties whose legislation does not forbid infringements of the preceding article bind themselves to take or to propose to their respective Legislatures the measures necessary for the prevention of such infringements.

The high contracting parties will communicate to one another as soon as possible the laws or regulations which have already been or may be hereafter promulgated in their States for giving effect to the above undertaking.

ART. 10. Without prejudice to any conventions which may hereafter be made, the provisions of this convention do not affect in any way the law in force in each country with regard to the limitation of shipowner's liability, nor do they effect the legal obligations arising from contracts of carriage or from any other contracts.

ART. 11. This convention does not apply to ships of war or to Government ships appropriated exclusively to a public service.

ART. 12. The provision of this convention shall be applied as regards all persons interested when all the vessels concerned in any action belong to States of the high contracting parties, and in any other cases for which the national laws provide.

Provided always that—

1. As regards persons interested who belong to a non-contracting State, the application of the above provisions may be made by each of the Contracting States conditional upon reciprocity.
2. Where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the convention are applicable.

ART. 13. This convention extends to the making good of damages which a vessel has caused to another vessel, or to goods or persons on board either vessel, either by the execution or non-execution of a manoeuvre or by the non-observance of the regulations, even if no collision had actually taken place.

ART. 14. Any one of the high contracting parties shall have the right, three years after this convention comes into force, to call for a fresh conference with a view to possible amendments, and particularly with a view to extending, if possible, the sphere of its application.

Any Power exercising this right must notify its intention to the other Powers, through the Belgian Government, which will make arrangements for convening the conference within six months.

ART. 15. States which have not signed this convention are allowed to adhere to it on request. Such adhesion

shall be notified through the diplomatic channel to the Belgian Government, and by the latter to each of the other Governments; it shall become effective one month after the sending of the notification by the Belgian Government.

ART. 16. This convention shall be ratified.

After an interval of at most one year from the day when the convention is signed, the Belgian Government shall place itself in communication with the Governments of the high contracting parties which have declared themselves prepared to ratify the convention, with a view to deciding whether it should be put into force.

The ratifications shall, if so decided, be deposited forthwith at Brussels, and the convention shall come into force a month afterwards.

The protocol shall remain open another year in favour of the States represented at the Brussels Conference. After this interval they can only adhere to it on conforming with the provisions of Article 15.

ART. 17. In the case of one or other of the high contracting parties denouncing this convention, such denunciation shall not take effect until a year after the day on which it has been notified to the Belgian Government, and the convention shall remain in force as between the other contracting parties.

ADDITIONAL ARTICLE.

Notwithstanding anything in the provisions of Article 16, it is agreed that it shall not be obligatory to give effect to the provisions of Article 5, establishing liability in cases where a collision is caused by the fault of a pilot carried by compulsion of law, until the high contracting parties shall have arrived at an agreement on the subject of the limitation of liability of shipowners.